

## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DUC DANG, SP 2014-PR-126 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit additions to remain 24.6 ft. and 23.8 ft. from one front lot line; addition to remain 22.0 ft. from other front lot line; deck to remain 0.1 ft. from side lot line; and a fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. **(THE BZA DID NOT APPROVE THE WOOD PATIO AND THE STAIRS.)** Located at 2855 Pine Spring Rd., Falls Church, 22042, on approx. 13,640 sq. ft. of land zoned R-4, HC. Providence District. Tax Map 50-3 ((19)) (6) 10. (Admin. moved from 9/17/14 for ads.) (Decision deferred from 9/24/14 and 10/22/14.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 2014; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. In reviewing the testimony, there have been several hearings on this, inspectors going out and checking on things, and there has been some cooperation on the part of the applicant to remedy certain violations and bring certain things into compliance.
3. There are certain things that the applicant has not justified. In particular, the wood patio and the steps that are 22 feet from the front lot line were built without a building permit. To that extent, the applicant has not justified the requirements for a special permit. As to the wood steps, it is hard to find that the noncompliance was done in good faith and through no fault of the property owner. To allow them to remain, it changes the character of and is detrimental to the neighborhood. Mr. Hammack went out and looked at this property. It is a neighborhood in some transition, but nevertheless, the Zoning Ordinance is there. The applicant offers no reason for building the patio, which is very low, but goes to the property line in violation of the Ordinance because he just does not want to mow the yard, and that is not a valid reason that satisfies the requirements of the Ordinance under Section A through H.
4. The applicant has a double front yard because it is a corner lot, but the stairs up to a second floor entrance are out of character with the neighborhood. They are in violation and were built without a building permit. The applicant offers no justification except that he wants a roommate to come in through a different entrance so as not to bother anyone who might be sleeping.

The roommate may, under certain circumstances, not be a violation, but under the facts that the Board was presented, was a violation.

5. The Board considered what is called a roofed deck, which is, in effect, the entrance into the house, to remain.
6. As far as the Board could see, the applicant has presented testimony that the slab for the house was actually erroneously located, off by about five feet, which has resulted in these violations. The construction itself took place around 2007. The applicant did get approval of some sort for the location of the slab back at that point. No action was taken against him to correct it at that time. With respect to the footprint of the house, while it is somewhat of a close case to the applicant satisfied the criteria to allow the house to remain without having to tear down five feet, or some feet off of it. It would really destroy the house. The mislocation is not so substantial that it is detrimental to the community to the point that it ought to be removed.
7. With respect to the fence in the side yard, it is a small fence. It would be brought down to six feet from what it is now. To the Board's way of thinking, it certainly is not objectionable.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. The error exceeds ten (10) percent of the measurement involved, or
- B. The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and
- C. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
- D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and
- E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

- F. It will not create an unsafe condition with respect to both other property and public streets, and
- G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.
- H. The reduction or modification will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

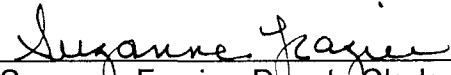
NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN-PART**, with the following development conditions:

- 1. This special permit is approved to permit the additions along Meadow View Road and fence as shown on the plat titled "Special Permit Plat, Lot 10, Block 6, Section 5, 2855 Pine Spring," prepared by Ibrahim A. Chehab, P.E. of GeoEnv Engineers, dated June 12, 2013, as revised through June 6, 2014.
- 2. All applicable permits and final inspections shall be obtained within 180 days of the approval of this application.
- 3. Within 180 days of the special permit approval, the height of the wood frame fence and fence posts located in the front yard shall be reduced to a maximum height of 6.0 feet.
- 4. Within 180 days of the special permit approval, the staircase addition in the front yard on Pine Spring Road shall be removed, and the portion of the deck on the northwest side of the house within the 10-foot setback shall be brought into conformance with the side yard setback. Applicable inspections shall be obtained.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart seconded the motion, which carried by a vote of 7-0.

A Copy Teste:

  
Suzanne Frazier, Deputy Clerk  
Board of Zoning Appeals